

Explanatory Statement

Issued by the Authority of the Minister for Communications.

Telecommunications Act 1997

Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment Declaration (No. 3) 2022

Authority

The *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment Declaration (No. 3) 2022* (the Amending Declaration) is made under section 360L of the *Telecommunications Act 1997* (the Act) and subsection 33(3) of the *Acts Interpretation Act 1901*.

Purpose

The purpose of the Amending Declaration is to amend the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2020* (the Principal Declaration) to add 11 new designated service areas.

Background

The statutory infrastructure provider (SIP) regime is set out in Part 19 of the Act and commenced on 1 July 2020. It aims to ensure that all people in Australia can access high speed broadband services. Under the Act, NBN Co is the default SIP for Australia, reflecting its role in the market. However, the SIP regime provides for alternative carriers to be the SIPs for the geographic areas where they deploy telecommunications networks. This recognises that there is a competitive market in Australia for the provision of telecommunications networks.

There are three main routes by which alternative carriers become the SIPs for service areas:

- First, a small number of geographic areas were specified in carrier licence conditions made during 2013-14. These areas were deemed as SIP areas in the statute (section 360J of the Act).
- Second, the Minister may declare that a geographic area is a ‘designated service area’ and that a specified carrier is the SIP for that designated service area (see section 360L of the Act). Eighteen SIPs have been designated.
- Third, from 1 July 2020, carriers must declare nominated service areas where they have installed telecommunications network infrastructure in a real estate development project, or a building redevelopment project, under a contract (see section 360H of the Act). Carriers must provide a copy of the declaration to the Australian Communications and Media Authority (ACMA). Six carriers have become SIPs through this process.

Since 2020 about 1,750 SIP service areas have been designated through the Principal Declaration and amendments made to it.

The key obligations of SIPs are to connect premises in their service areas to their telecommunications networks, and supply wholesale services, on reasonable request from a carriage service provider acting on behalf of an end-user within the designated SIP area. The wholesale services must allow the retail provider to supply ‘qualifying carriage services’, which are broadband services with peak download and upload speeds of at least 25/5 Mbps. On fixed-line or fixed wireless networks, the wholesale services SIPs supply must also enable retail providers to supply voice services. SIPs must also publish the terms and conditions on which they offer to connect premises and supply eligible services to carriage service providers.

Under section 360Z of the Act, the ACMA is required to maintain a register which, amongst other things, must contain the name of each SIP and, for each of those SIPs, the relevant service area or areas. The names and geographical boundaries of the designated service areas declared in the Amending Declaration and the name of the relevant SIP will be made publicly viewable by the ACMA on its register. The data will also be available for display on the National Map.

Summary of the Amending Declaration

Schedule 1 to the Amending Declaration provides the amendments to the Principal Declaration. The amendments consist of 11 new designated service areas for Lynham Networks Pty Ltd.

Lynham Networks acquired a small network provider, Space Connect Pty Ltd, earlier in 2022. Space Connect delivered high speed broadband services to multi-unit buildings in Melbourne. Following that acquisition, Lynham Networks identified 11 buildings within Space Connect’s footprint where Space Connect had deployed high speed networks as a result of a contract with a developer prior to 1 July 2020. It therefore requested that the buildings be designated as SIP service areas.

To provide certainty to residents in the buildings, and to industry, about which network provider should be the SIP for the buildings, the Minister has decided to declare that the 11 buildings are designated service areas for the purposes of Part 19 of the Act, and that Lynham Networks is the SIP for the areas constituting the buildings.

The Amending Declaration is a legislative instrument for the purposes of the *Legislation Act 2003*. The Amending Declaration commences the day after it is registered.

Details of the Amending Declaration are set out in [Attachment A](#).

Consultation

The Department consulted NBN Co, as the default SIP for Australia, on the proposed area designations and also consulted Lynham Networks, the Australian Communications Consumer Action Network, Communications Alliance and the ACMA on the draft Amending Declaration. No concerns were raised about the draft Amending Declaration.

The Amending Declaration is covered by a standing Regulatory Impact Statement (RIS) exemption issued by the Office of Best Practice Regulation (OBPR), as the regulatory impacts of the Amending Declaration are minor and/or machinery in nature, and were considered and costed as part of the implementation of the wider SIP regime (OBPR ID: 44338).

Statement of Compatibility with Human Rights

A statement of compatibility with human rights for the purposes of Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* is set out at Attachment B.

Details of the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment Declaration (No. 3) 2022*

Section 1 – *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment Declaration (No. 3) 2022*

This section provides that the name of the instrument is the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment Declaration (No. 3) 2022* (the Amending Declaration).

Section 2 – Commencement

This section provides for the Amending Declaration to commence on the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Amending Declaration is made under section 360L of the *Telecommunications Act 1997* (the Act) and subsection 33(3) of the *Acts Interpretation Act 1901*.

Section 4 – Schedule

This section provides that each instrument specified in the Schedule to the Amending Declaration is amended or repealed as set out in the applicable item in the Schedule concerned, and that any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Schedule 1 to the Amending Declaration sets out amendments to the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2020* (the Principal Declaration). Items one to five in Schedule 1 specify 11 new designated service areas to be added to Schedule 9 of the Principal Declaration. These would be items 16A, 31A, 31B, 31C, 34A, 34B, 34C, 34D, 34E, 35B, and 37A. The service areas cover the buildings on the sites in their entirety (that is, all premises on all floors).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment Declaration (No. 3) 2022

Overview

The purpose of the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Amendment Declaration (No. 3) 2022* (the Amending Declaration) is to amend the *Telecommunications (Designated Service Area and Statutory Infrastructure Provider) Declaration (No. 1) 2020* (the Principal Declaration) to add 11 new service areas.

The Principal Declaration was made under Part 19 of the *Telecommunications Act 1997*. Part 19 establishes the statutory infrastructure provider (SIP) regime, which provides a framework for people in Australia to access high-speed broadband wherever they live or work.

The Amending Declaration amends Schedule 9 of the Principal Declaration, which specifies Lynham Networks' 'designated service areas'. The amendments are being made because Lynham Networks acquired a small network provider, Space Connect Pty Ltd, which had deployed high-speed broadband to 11 buildings in Melbourne. Lynham Networks asked the Minister to declare the 11 buildings as designated service areas for the purposes of Part 19 of the Act, with Lynham Networks as the SIP.

Designated service areas are geographic areas in which telecommunications networks have been built by carriers other than NBN Co and the Minister has determined that those carriers, rather than NBN Co, should fulfil SIP obligations. Once a service area is designated, end-users living or working in such areas have certainty that they will have access to infrastructure that supports the delivery of superfast broadband services, as well as voice services (where fixed-line or fixed wireless networks are used), which are important for social, economic, political and cultural activity.

The Amending Declaration does not include personal information about any end-user residing or working within a designated service area.

Human rights implications

The Amending Declaration is compatible with the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia. The Amending Declaration does not engage any of the applicable rights or freedoms.

Conclusion

The Amending Declaration is compatible with human rights as it does not raise any human rights issues.